How Errors in E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants

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The E-Verify employment eligibility verification program is being sold as an easy fix that would curb unauthorized employment by immigrants and protect American jobs. But proposals to expand the program entirely ignore the effect the program will have on U.S. citizens and lawfully present noncitizens. At a time when the country is focused on increasing job growth, we should not enact policies that will increase unemployment and jeopardize the job security of American workers.

■ Database errors incorrectly identify U.S. citizens as not authorized for employment.

- A U.S. citizen born in Florida was hired for a well paying telecommunications position in October 2010. After she was hired, information from documents she submitted was processed through E-Verify, but the system issued a "tentative nonconfirmation" (TNC) notice to her. Her employer did not sit down with her to explain what a TNC means, nor to explain any of her rights. The worker visited her local Social Security Administration (SSA) office to try and resolve the situation, but, due to agency paperwork errors, she wasn't able to. She tried to communicate this to the employer, but ultimately the E-Verify system issued her a "final nonconfirmation" (FNC) notice, and the employer fired her. Since then, she has gone to great lengths to correct this error but has been unsuccessful. She was unemployed for over three months, including over the year-end holidays, but recently accepted a new, lower-paid position.[1]

- A U.S. citizen and former captain in the U.S. Navy with 34 years of service and a history of having maintained high security clearance was flagged by E-Verify as not eligible for employment. It took him and his wife, an attorney, two months to resolve the discrepancy.[2]

- A U.S. citizen was hired for a job at a poultry company in Georgia but received a TNC notice. The employee wanted to contest the TNC, but the company did not grant her time off to do so. As a result, the employee had no time to contest the TNC and was fired.[3]

- Juan Carlos Ochoa became a citizen in 2000. When he was offered a job at a car dealership in 2008, his employer used E-Verify to verify his employment eligibility. The employer received a TNC notice due to an error in SSA's database; SSA did not have any record of Ochoa's naturalization. Upon receiving the notice, Ochoa's employer fired him, a violation of E-Verify rules. Because he is out of work, he is late on his rent and his electricity has been shut off. Though Ochoa has a U.S. passport, the local SSA office told him he must bring in his naturalization certificate to prove his U.S. citizenship. Ochoa, however, lost his naturalization certificate years ago and will now have to pay close to $400 and wait up to ten months for a replacement certificate.[4]

- A naturalized U.S. citizen was hired by an Oregon telecommunications company but received a TNC because SSA records did not accurately reflect his citizenship status. He successfully contested the TNC at an SSA office, but the SSA representative did not correct his record. E-Verify then automatically issued an FNC, at which point the employer is required to dismiss the nonconfirmed worker. The employer did not immediately terminate the worker, however, but ran another query in E-Verify and got another TNC. The employee went back to SSA, and this time a representative updated his record but still failed to post the change to E-Verify. Once again, the employee received an FNC. Finally, he called the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), which called the SSA field office to explain proper E-Verify procedures so that the employee could keep his job.[5]

- A U.S. citizen residing in Florida was terminated by a national department store chain as a result of an erroneous E-Verify finding. The worker recently remarried and changed her name. After she received the TNC notice, she attempted to resolve the matter directly with the local SSA office and was informed by SSA that the matter was resolved. When she returned to work, she was informed that the U.S. Dept. of Homeland Security (DHS) had directed the company to terminate her employment and was told, "[Y]ou are suspected as a terrorist."[6]

- Francisco Romero, a U.S. citizen from Arizona, has been fired twice from jobs as a construction worker after E-Verify failed to confirm his employment eligibility. He has been a U.S. citizen since 1996, but in 2008 he spent months shuttling between SSA and human resource offices trying to obtain confirmation that he is eligible to work. Romero was only able to return to work after a community advocate took on his case and located the error that was keeping him from being able to secure employment.[7]

- A 16-year-old U.S. citizen received a TNC because his mother's maiden name was listed in his SSA records but he used his father's last name on his application. Instead of letting him fill in the application with the correct name, the employer told his mother that his name would have to be legally changed.[8]

- In December 2008, a U.S. citizen was hired by a sporting goods store in Mississippi. E-Verify issued a TNC, but the store manager unlawfully told the worker not to contest the TNC. The corporate office then fired her due to her failure to contest the TNC.[9]

- Ken Nagel, a restaurant owner in Phoenix, Arizona, expressed scorn regarding E-Verify after he hired one of his daughters, a native-born U.S. citizen, and, upon feeding her information into the system, received a nonconfirmation of her eligibility to be employed in the U.S.[10]

- A U.S. citizen applied for a job at an Oklahoma City nursing home and was offered the position. The job offer was rescinded, however, and the nursing home notified her that it had decided to hire someone else. Later, it sent the worker a notice that she had received a TNC and that, as a result, someone else had been hired.[11]

- A U.S. citizen used the services of an employment services company in San Francisco, California, to look for a job. After applying online, she was given an appointment and told that there were a number of employers that would be interested in her based on her extensive work history. The next day, the employment agency told her that she could not be offered a job because the agency could not verify her U.S. citizenship. The employment services company was enrolled in E-Verify and received a TNC about the worker because the system could not make a determination about her work authorization. The employment agency violated E-Verify rules by refusing to give her a copy of the notice, though she requested one in order to seek legal advice. The agency demanded that she sign the notice right away so it

could destroy copies of her documents. When she refused, the employment agency told her that it could not place her because she was ineligible to work in the U.S.[12]

- A U.S. citizen with specialized engineering skills went to a staffing agency in Colorado and obtained a high-paying job. He received an erroneous TNC, however, and, against program rules, the agency did not allow him to continue working until he had corrected the error with the SSA. After the error was corrected, the agency was unable to find a comparable job for the employee.[13]

■ Database errors incorrectly identify lawfully present immigrants and refugees as not authorized for employment.

- A lawful permanent resident was hired by a Colorado children's learning center, but she received an erroneous TNC. She called DHS to contest the TNC, but DHS made no record of her call. E-Verify then automatically issued a final nonconfirmation, and the employee was fired. She did not get her job back until she called OSC, which worked with DHS to correct the error.[14]

- An employment-authorized immigrant was hired by a laundry facility in Minneapolis, Minnesota. When the employee's name was entered into E-Verify, his employer received a TNC because of an error in SSA's database. The worker was able to resolve the issue with the local SSA field office; however, when the employer reentered his information into the system, the employer received an FNC. Although the employer wanted to keep the worker, under E-Verify rules, the employer had to fire the worker or risk being found liable for violating immigration laws.[15]

- A Burmese refugee was hired at a job in Texas, but he received a TNC when his employer entered an incorrect date of birth in E-Verify. The employer then wrongly suspended him until he could resolve the TNC. In addition, the employer failed to provide him with the referral letter advising him to contact DHS by phone, so the refugee visited a DHS office instead. Once he got there, the office could not help him because he did not have the referral letter with his case number. Finally, he contacted OSC for help, and OSC corrected the error and arranged to reinstate the employee with full back pay.[16]

- A refugee attempted to obtain a job with a Texas oil production company, but the company unlawfully processed the refugee's information through E-Verify before hiring him and received a TNC. The refugee went to his local SSA office that same day and corrected the problem, but the company refused to resume the hiring process until the refugee contacted OSC.[17]

- A lawfully present immigrant worker was offered a job by a construction, fabrication, and maintenance company in Texas. The employer was enrolled in E-Verify and received a TNC about the worker. Violating program rules, the employer did not give the worker the opportunity to contest the notice. Despite this, the worker went to the local SSA office and received the appropriate confirmation that he was, in fact, authorized to work. Even with clarification from SSA, the employer refused to take the worker back. The worker even enlisted the help of an attorney, who sent a letter to the employer outlining its obligations under E-Verify. The employer failed to respond.[18]

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[1] Facts gathered by NILC staff during the course of providing technical assistance to this Floridian, beginning in mid-December, 2010.

[2] Account related at a Jan. 24, 2009, town hall meeting in Ashtabula, OH, sponsored by Building Unity in the Community and billed as "Why We Need Comprehensive Immigration Reform."

[3] Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice (OSC), *E-Verify Hotline Interventions*, Feb. 5, 2009.

[4] Veronica Sanchez, "U.S. Citizen Claims He's Victim of Employer Sanctions," *12 News*, Mar. 7, 2008, http://img.azcentral.com/12news/news/articles/employersanctions03072008.html.

[5] OSC, *E-Verify Hotline Interventions*, May 8, 2009.

[6] OSC, *E-Verify Hotline Interventions*, Sept. 2009, emphasis added.

[7] Kerry Howley, "Get in Line! Will Americans Have to Prove Their Right to Work Via an Error-plagued Database?" *Reason*, Oct.1, 2008, p. 38.

[8] OSC, *E-Verify Hotline Interventions*, Jan. 5, 2009.

[9] OSC, *E-Verify Hotline Interventions*, Jan. 9, 2008.

[10] Ronald J. Hansen, "Economy Serves Up Unhappy Meal: Worst Lull in 2 Decades is Hurting Valley Restaurateurs," *Arizona Republic*, Mar. 3, 2008, www.azcentral.com/business/articles/0303biz-econ-restaurants0303.html.

[11] OSC, *E-Verify Hotline Interventions*, Dec. 17, 2007.

[12] Technical assistance request call received by NILC in Dec. 2007.

[13] OSC, *E-Verify Hotline Interventions*, Sept. 11, 2007.

[14] OSC, *E-Verify Hotline Interventions*, July 14, 2008.

[15] Case described to NILC staff by Bruce Nestor of De León & Nestor, Minneapolis, Minnesota, in April 2008.

[16] OSC, *E-Verify Hotline Interventions*, May 8, 2009.

[17] OSC, *E-Verify Hotline Interventions*, Dec. 4, 2008.

[18] Information provided to NILC by the Southern Poverty Law Center in Jan. 2008.